

9200/1621
396.40193X00
#8

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): NINOMIYA, et al.
Serial No.: 09/874,276
Filed: June 6, 2001
For: PROCESS FOR PRODUCING A POLYOL
Group: 1621
Examiner: A. Siegel

PETITION TO WITHDRAW HOLDING OF ABANDONMENT
BASED ON FAILURE TO RECEIVE NOTICE OF ALLOWANCE

Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

July 18, 2002

Sir:

The Notice of Abandonment mailed May 31, 2002 (copy attached herewith), in connection with the above-identified application, is noted. This Notice indicates that the application was abandoned due to Applicants' failure to timely pay the required Issue Fee within the statutory period of three months from the mailing date of the Notice of Allowance, the Issue Fee not having been received. Upon a telephone communication with an employee at the U.S. Patent and Trademark Office, it was indicated to the undersigned that the Notice of Allowance in connection with the above-identified application was mailed January 31, 2002.

However, as seen by the enclosed evidence and for the reasons discussed below, it is submitted that this Notice of Allowance mailed January 31, 2002 was never received in the offices of the undersigned attorneys. Accordingly, pursuant to Manual of Patent Examining Procedure 711.03(c), and under the guidelines of

Delgar v. Schuyler, 172 USPQ 513 (D.D.C. 1971), it is respectfully petitioned that the holding of abandonment be withdrawn, that a new Notice of Allowance be mailed in the above-identified application, and that a new period for response to the new Notice of Allowance be set, to begin with the date of mailing of the new Notice of Allowance.

This Petition is being filed within two months of the action complained of (that is, the Notice of Abandonment mailed May 31, 2002). Clearly, requirements of 37 CFR 1.181(f) are satisfied.

In the following will be discussed the enclosed evidence establishing that the Notice of Allowance which was indicated as having been mailed January 31, 2002, in connection with the above-identified application, was never received in the offices of the undersigned.

That is, a search of the application file for the above-identified application and docket records of the undersigned law firm indicates that the Notice of Allowance mailed January 31, 2002, for the above-identified application was not received in the offices of the undersigned law firm. Moreover, the undersigned states that this Notice of Allowance mailed January 31, 2002, for the above-identified application, was not received by the undersigned.

In the offices of the undersigned attorney, all mail which is received from the U.S. Patent and Trademark Office (PTO) is given directly to a docketing department after having been opened in the mailroom of the undersigned law firm. Responsive to receipt of such mail, as a first safeguard, the docketing department maintains a computer database which stores information relating to the filing of papers in the PTO, receipt of papers from the PTO, and due dates for responding to papers

received from the PTO. The data in the computer database is backed up on a magnetic tape at the end of each work day.

Attached hereto is a print out of pertinent data in the computer database for the present application. The attached print-out shows data fields of "ACTION", "BASE", "DUE IN", "DUE", "EXTNS" (extensions), "FINAL", "EXT" and "RESPONSE", which will be referred to below.

When a paper which must be responded to is received from the PTO, the docketing department enters the mailing date of such paper in the "ACTION" data field. For example, in the present application, an Office Action was mailed on September 5, 2001 ("9/5/2001"). Therefore, when this Office Action was received in the offices of the undersigned, the docketing department entered "RESPONSE TO OA" in the "ACTION" field; "9/5/2001" in the "BASE" field; "3M" in the "DUE IN" field; "12/5/2001" in the "DUE" field; "3" in the "EXTNS" field (the "1" being due to the date of entry of the data); "3/5/2002" in the "FINAL" field and "12/5/2001" in the "RESPONSE" field (which is the date that the response was filed).

As can be seen in the enclosed listing of data from the computer database for the above-identified application Serial No. 09/874,276, there is no entry for a Notice of Allowance, much less an entry for a Notice of Allowance having a mailing date ("BASE") of 1/31/2002. While all data fields are filled in the enclosed copy of the print out, the undersigned notes that there are no subsequent data entries to the "CALL UP ERRON. ABAND" under the data field "ACTION", in connection with application Serial No. 09/874,276.

From the enclosed print out itself, it is respectfully submitted that this shows that the Notice of Allowance mailed January 31, 2002 was never received in the offices of the undersigned.

Furthermore, as a second safety cross-check against the computer database, the docketing department maintains a handwritten master docket book which has a set-up of one page for each day of the year (an additional page or pages being stapled to said one page where there are an excess of entries for that page).

After data relating to a PTO paper has been entered into the computer data base, the docketing department handwrites data relating to such paper into the master docket book on the page corresponding to the expiration date of the maximum date for response to the paper. This data is entered as follows, from left to right, where a response to a PTO action is due: law firm docket number; last name of first-named inventor; U.S. application Serial No.; type of response due; and responsible attorney's initials. The last entry in a row is a date, indicating when the response was filed. The expiration date for response to a Notice of Allowance mailed January 31, 2002 for the above-identified application would be April 30, 2002, so if entered into the master docket book the entry for the Notice of Allowance mailed January 31, 2002, would have been on the master docket book page for April 30, 2002.

Attached hereto is a copy of the pages (main page and additional page) of the master docket book for April 30, 2002.

If the Notice of Allowance mailed January 31, 2002, had been received in the offices of the undersigned, the attached copy of the pages of the master docket book for April 30, 2002, would show an entry with the following data:

Docket Number "396.40193X00"; the last name "NINOMIYA"; Serial No. "874,276", notation "Issue Fee", and the initials "WIS". However, as can be seen from the attached copy of the pages of the master docket book for April 30, 2002, such an entry does not appear. It is respectfully submitted that the absence of an entry on

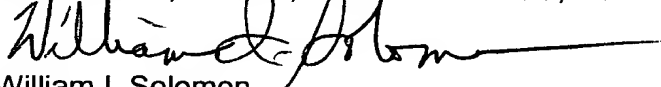
April 30, 2002 in the master docket book further evidences the fact that the Notice of Allowance mailed January 31, 2002 was never received in the offices of the undersigned.

For the reasons discussed above, it is respectfully submitted that the Notice of Allowance mailed January 31, 2002 for the above-identified application was never received in the offices of the undersigned. Accordingly, pursuant to Manual of Patent Examining Procedure 711.03(c)(II), it is respectfully requested that the holding of abandonment be withdrawn and that a new Notice of Allowance be issued, with a re-set period for response thereto to begin with the date of mailing of the new Notice of Allowance.

To the extent necessary, Applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to the Deposit Account No. 01-2135 (Case No. 396.40193X00) and please credit any excess fees to such Deposit Account.

Respectfully submitted,

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WIS/slk
Enclosures

OPER: WSM ENTERED 6/4/2001 MOD: 7/17/2002 ATTORNEYS WIS / WIS / D PRINTED ON: 7/18/2002

ATSK# 396.40193x00 CNTRY US UNITED STATES NEW/CON CEQ RELATED n/a

PATS# P20362US0 TYPE UTL SERIAL# 09/874,276 PATENT# STAT PUBLISHED

TITLE PROCESS FOR PRODUCING A POLYOL RL/FM 11881/001

CLIENT 396 OHTANI PATENT OFFICE 1 CREF FM-301(2001-22U) SE ART 1621

AGENT AREF CLAIMS

PRIOR 6/27/2000 MAIL 6/6/2001 FILE 6/6/2001 PUBL 1/17/2002 ISSUE EXP 6/6/2021 1ST 6/6/2001

| ID | O | ACTION | BASE | DUE IN | DUE | EXTNS | FINAL | EXT | RESPONSE | CALL | 1 | 2 | P |
|----|---|----------------------|-----------|--------|-----------|-------|-----------|-----|-----------|------|---|---|---|
| DO | N | APPL FILING DEADLINE | 6/27/2000 | 12 M | 6/27/2001 | | 6/27/2001 | 0 | 6/6/2001 | 1 M | Y | Y | Y |
| PC | N | POST CARD CHECK | 6/6/2001 | 1 M | 7/6/2001 | | 7/6/2001 | 0 | 6/18/2001 | 0 M | N | N | Y |
| | Y | FILREC RECD | 8/7/2001 | | | | | | | | | | |
| | Y | PRE AMEND FILED | 8/9/2001 | | | | | | | | | | |
| AZ | Y | REC ASSIGNMENT RCVD | 8/24/2001 | | | | | | | | | | |
| FS | N | FILG RCPT STATUS CHK | 6/6/2001 | 3 M | 9/6/2001 | | 9/6/2001 | 0 | 8/17/2001 | 0 M | N | N | Y |
| RE | N | RESPONSE TO OA | 9/5/2001 | 3 M | 12/5/2001 | 3 1 | 3/5/2002 | 1 | 12/5/2001 | 1 M | Y | Y | N |
| PZ | Y | NOT OF PUBLICATION | 1/17/2002 | | | | | | | | | | |
| | Y | NOT OF ABANDONMENT | 5/31/2002 | | | | | | | | | | |
| | N | CALL UP ERRON. ABAND | 7/18/2002 | 0 M | 7/18/2002 | | 7/18/2002 | 0 | | 1 M | Y | Y | Y |

INVENTORS

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PRIOR APPLICATIONS

| REFERENCE# | CNTRY | SERIAL# | FILED | TITLE / DESCRIPTIO | TYPE |
|------------|-------|-------------|-----------|--------------------|------|
| | JP | 2000-192468 | 6/27/2000 | | APPL |
| | JP | 2000-192469 | 6/27/2000 | | APPL |
| | JP | 2000-192470 | 6/27/2000 | | APPL |
| | JP | 2000-192471 | | | APPL |

NOTES

06/08/01 FAX/FILE PRELIM AMNDT
 11/2/01 FAX/COMMS/INSTR
 11/8/01 LTR/CONFIRM FAX

